

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARIO P. TELLO

Plaintiff,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.

2:12-cv-01040-GMN-RJJ

ORDER

This matter comes before the Court on the Plaintiff's Motion for Jury Trial (#36) and the Plaintiff's Motion to Extend Time to File Jury Demand (#37). The Court has considered the Plaintiff's Motions (#36) and (#37). No response or reply has been filed in this matter. Responses were due November 30, 2012.

BACKGROUND

On May 29, 2012, Plaintiff Mario P. Tello filed the Verified Complaint against Defendants Bank of America et al. in the Eight Judicial District Court District of Nevada. Verified Complaint, attached as Exhibit 1 to Petition for Removal (#1). The Defendants removed this case to the United States District Court for the District of Nevada. Minute Order (#3). Subsequently, on June 26, 2012, the Defendants moved to dismiss this case for improper service and failure to state a claim. Motion to Dismiss (#5). On October 30, 2012, the Court stayed discovery pending a decision on the Motion to Dismiss. Order Granting Motion to Stay (#34).

On November 13, 2012, Tello filed the present motion for trial by jury (#36). That same day, he moved for an extension of time to file the jury demand (#37). Tello requested the extension of

1 time to file the Jury Demand (#37) because he was unaware whether his motion for a jury trial (#36)
2 was timely. The Defendants have not filed an opposition, which was due November 30, 2012.

3 **DISCUSSION**

4 Federal Rule of Civil Procedure 38(b) permits a party to demand a jury trial. FED. R. CIV.
5 P. 38(b). Such demand may be made by “(1) serving the other parties with a written demand—which
6 may be included in a pleading—no later than 14 days after the last pleading directed to the issue is
7 served; and (2) filing the demand in accordance with Rule 5(d).” FED. R. CIV. P. 38(b). A party
8 waives the right to a jury trial if the party fails to make a timely demand. *See, Bell v. Cameron*
9 *Meadows Land Co.*, 669 F.2d 1278, 1285 (9th Cir. 1982).

10 In this case, the Defendants have not filed an Answer. Rather, the Defendants moved to
11 dismiss the action for insufficient service and for failure to state a claim. Motion to Dismiss (#5).
12 Should the Court deny the Motion to Dismiss, this litigation will continue at which point the
13 Defendants will likely file an Answer. Thus, because the parties have not filed all the pleadings in
14 this case, the Plaintiff’s Motion for a Jury Trial (#36) was timely. Further, the Motion for an
15 Extension of Time (#37) is moot because no extension is needed.


16 **CONCLUSION**

17 Based on the foregoing, and good cause appearing therefore,

18 IT IS HEREBY ORDERED that Defendant’s Motion for Jury Trial (#36) is **GRANTED**.

19 IT IS FURTHER ORDERED that Plaintiff’s Motion to Extend Time to File Jury Demand
20 (#37) is **DENIED** as moot.

21 DATED this 26th day of December, 2012.

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25 ROBERT J. JOHNSTON
26 United States Magistrate Judge
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